

**PUBLIC HEARING DRAFT
PROPOSED AMENDMENTS TO 310 CMR 40.0000, THE MASSACHUSETTS CONTINGENCY PLAN**

PREAMBLE

BACKGROUND

The Massachusetts Department of Environmental Protection's (DEP) Bureau of Waste Site Cleanup (BWSC) is proposing to revise its regulations, the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000. BWSC is responsible for ensuring the immediate and effective response to sudden releases of oil and hazardous material to the environment, such as oil spills and chemical fires, and other conditions that pose an Imminent Hazard to human health or environment. BWSC also ensures the adequacy and timeliness of actions conducted by private parties to assess and cleanup disposal sites.

The MCP sets forth the requirements for notifying DEP of releases and threats of releases of oil or hazardous material and for conducting response actions to investigate and cleanup disposal sites contaminated by oil and hazardous materials. In the mid-1990s, BWSC conducted a comprehensive review of its program. The results were published in a Final Generic Environmental Impact Report (GEIR) in February 1999. The report recommended a number of actions DEP could take to strengthen and increase the flexibility of the MCP. Instead of attempting to implement all the recommendations at once, BWSC has been addressing them incrementally through a series of "waves" of MCP revisions. "Wave 1" regulations became effective in October 1999. In June 2003, revisions to streamline permits and approvals under the MCP went into effect. The June amendments were originally planned as the third wave of revisions, but BWSC pushed forward these changes as they increased its ability to deploy staff to the most critical functions in response to agency layoffs.

The proposals that are the subject of this public hearing draft comprise what BWSC originally planned as the "Wave 2" amendments. These proposals are intended to improve several specific program components as identified in the Final GEIR, to clarify and strengthen performance standards and to ensure the most recent scientific information forms the basis for cleanup standards. Many of the proposals were developed by workgroups comprised of program stakeholders and DEP staff.

The public hearing draft has been organized into sections of related proposals. The sections include:

- Front End/Construction-Related Response Actions, Comprehensive Response Actions, Temporary Solutions, Post-RAO Response Actions and Numerical Ranking System
- Public Involvement
- Subparts I and J and Miscellaneous
- Numerical Standards

SCHEDULE

The anticipated schedule for soliciting public comment on these proposals and promulgating final regulations is as follows:

September 17, 2004 Send notices of the proposed amendments and the public hearing schedule to state agencies

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- October 7 DEP presents an overview of the proposals at the Waste Site Cleanup Advisory Committee Meeting at the Department of Environmental Protection, One Winter Street, Boston, 9:30 a.m. to 12:00.
- October 8 Public Comment Period begins. Public hearing draft is available on DEP's website at <http://www.mass.gov/dep/bwsc/news.htm> and at DEP's Boston and Regional Service Centers
- October 22 Notice of Public Hearings is published in the Massachusetts Register
- November Public hearings on the proposed amendments conducted under the provisions of M.G.L. Chapter 30A are held in 4 locations:
- November 8, 2004 --Springfield – 10:00 a.m.**, Department of Environmental Protection, Western Regional Office, 436 Dwight Street, RM B42
- November 15, 2004 – Boston – 10:00 a.m.**, Department of Environmental Protection, Boston/Northeast Regional Offices, One Winter Street, 2nd floor, Atlantic/Berkshire Rms.
- November 16, 2004 – Bourne – 7:00 p.m.**, Upper Cape Cod Regional Technical School, 220 Sandwich Road, Cafeteria
- November 17, 2004 – Worcester – 5:00 p.m.**, Department of Environmental Protection, Central Regional Office, 627 Main Street
- December 10 Public comment period is closed

After the close of the public comment period, DEP will review comments and make appropriate revisions to the final draft. DEP is aiming to issue the final regulations in Spring 2005.

ASBESTOS IN SOIL PUBLIC HEARING DRAFT

DEP is releasing the Asbestos in Soil (AIS) public hearing draft at the same time as the Wave 2 public hearing draft. The AIS public hearing draft includes revisions to the MCP, the Air Quality regulations, and the Solid Waste Management regulations that are intended to clarify and streamline requirements for assessment and cleanup of asbestos that has been released to the environment. Please note: proposed amendments to the Massachusetts Contingency Plan that are part of the Asbestos in Soil package appear in both the MCP and AIS packages.

Because of the overlap between the AIS amendments and the MCP amendments, the public comment process and public hearings for the AIS and MCP Wave 2 regulatory packages will be conducted simultaneously according to the schedule above. The AIS public hearing draft is posted with the MCP Wave 2 public hearing draft at <http://www.mass.gov/dep/bwsc/news.htm>

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SUMMARY OF MCP WAVE 2 ISSUES BY SECTION

The text below summarizes the MCP Wave 2 public hearing draft by topic. Issues within each section of the public hearing draft have been numbered and briefly described. The number in the preamble corresponds to a **NOTE TO REVIEWERS** in that particular section of the public hearing draft that provides a more detailed discussion of the proposed revision and related issues about which DEP is seeking comment. This format is intended to help reviewers to more readily find issues of interest.

- **FRONT END/CONSTRUCTION-RELATED RESPONSE ACTIONS, COMPREHENSIVE RESPONSE ACTIONS, TEMPORARY SOLUTIONS, POST-RAO RESPONSE ACTIONS AND NUMERICAL RANKING SYSTEM**

1. Seeks comment on the effective date for the amendments.
2. Clarifies that monitoring is required after last application of Remedial Additives.
3. Expands the eligibility and scope of the Special Project Designation.
4. Clarifies when a condition of Substantial Release Migration requires notification.
5. Clarifies that notification is required when there is a substantial likelihood of an UST leak.
6. Clarifies the existing notification exemption for parties who obtain knowledge of a release for a disposal site where notification was previously provided to the Department.
7. Clarifies “re-opener” provision where parties have previously documented closure of the disposal site.
8. Seeks comment on whether a new notification exemption should be created for naturally occurring levels of arsenic in Worcester County soil and arsenic and beryllium in Boston Blue Clay.
9. Specifies that more specific location information be provided at the time of notification.
10. Clarifies conditions for retracting a Threat of Release notification.
11. Deletes provisions made unnecessary by 10/99 MCP revisions that included Conditions of Substantial Release Migration as a 72-hour notification condition. Inserts requirement that Immediate Response Actions be conducted to address Imminent Hazard conditions at sites.
12. Codifies guidelines set forth in DEP’s “Construction of Buildings in Contaminated Areas” policy and provides for focused site assessment, risk characterization and feasibility evaluation in and near where construction of a permanent structure is being undertaken.
13. Replaces term “excavation” with “generation” in the RAM provisions to be consistent with the “Construction of Buildings in Contaminated Areas” policy.
14. Clarifies the timeline for submitting Status Reports.

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15. Revises various sections at 310 CMR 40.0400 and 310 CMR 40.0800 to implement the use of the Remedial System Monitoring Report (RSMR). The RSMR is intended to document the operation and monitoring of active remedial systems, the application of remedial additives and monitoring conducted as Active Operation and Maintenance of a remedy.
16. Seeks comment on the proposal to require that Remedial System Monitoring Reports be submitted electronically. Different reporting frequencies (monthly, every three months or annually) are proposed; reporting frequencies are tied to whether the system is addressing an Imminent Hazard or Condition of Substantial Release Migration and whether the remedy employs an Active Remedial System or Remedial Additives.
17. Seeks comment on the content and format of the draft Remedial System Monitoring Report transmittal form. Note: the RSMR transmittal form will not be incorporated into the MCP. DEP is seeking comment on the form, however, in conjunction with the review of the proposed revisions to implement the RSMR submittal requirements.
18. Clarifies at 310 CMR 40.0810 that when performing Comprehensive Response Actions, Completion Statements for each phase must be received in sequential order or concurrently.
19. Deletes a cross-reference that no longer exists after the 6/03 amendments.
20. Clarifies the content of a Phase II site map.
21. Revises 310 CMR 40.0881 and 310 CMR 40.0893 to clarify that remedial actions which require active monitoring, such as those involving reactive walls or monitored natural attenuation, may file Remedy Operation Status in accordance with 310 CMR 40.0893.
22. Clarifies that Phases III and IV must be completed prior to achieving Remedy Operation Status.
23. New provision that would allow for the modification of Remedy Operation Status to add a new party.
24. Clarifies that response actions performed after the termination of Remedy Operation Status require a Permit, Tier Classification or Extension thereof and provides for maintaining Remedy Operation Status when a system is shut down to monitor for rebound of contaminant concentrations.
25. Corrects an erroneous cross-reference.
26. Creates two subcategories of Class C RAO, Temporary Solutions. Revision at 40.1050(1) specifies that the achievement of a Class C RAO requires the identification and elimination or mitigation of sources of oil or hazardous materials, to the extent feasible.
27. Adds the evaluation of Critical Exposure Pathway (CEP) elimination/mitigation measures to the list of evaluations that employ the feasibility criteria in 310 CMR 40.0860. (The CEP requirements currently reference 40.0860; this change completes the cross-reference.)

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28. Proposes to amend the requirements for conducting Response Actions after an RAO by replacing 310 CMR 40.0581 and 310 CMR 40.0582 with a new section 310 CMR 40.1067. The revisions are intended to clarify and streamline the existing requirements.
29. Updates toxicity tables used in ranking disposal sites using the Numerical Ranking System.

• **PUBLIC INVOLVEMENT PROPOSALS**

1. Deletions:
 - a. reference to Technical Assistance Grants (TAGs) in the part of the regulations that deals with public involvement
 - b. the requirement to announce public notices for Tier 1 sites in the Environmental Monitor
 - c. other references in the regulations that address publishing notices in the Environmental Monitor
2. Establishes procedures for providing written and public notices of response actions. Public notices will be required to be published in the local news section of newspapers instead of in the legal notice section. If the cost of the advertisement exceeds the cost of a legal notice of comparable size by 20 percent or more, then a legal notice may be published. Establishes a process that documents the type of written notification used and the people to whom the notification was made.
3. Revises the provisions for Public Notices of Special Project Designations and case-specific designations of Non-Potential Drinking Water Source Areas to require the use of advertisements in local newspapers.
4. Requires that property owners be informed of the right to obtain the results of environmental samples taken on their property.
5. Requires that local officials be sent a copy of the Release Notification Form that clearly describes the site location.
6. Requires the notification of the owners and occupants of properties who are affected by remedial actions to address an Imminent Hazard or a Critical Exposure Pathway.
7. Requires that a written notice be sent to property owners when their property is included within the boundaries of a disposal site.
8. Requires that a written notice be sent to owners of properties that abut a delineated disposal site.
9. Amends existing provisions to reflect the new notification and documentation requirements.
10. Notifies owners/operators of public water supplies of disposal sites with groundwater contamination within their resource areas.
11. Clarifies that the public involvement provisions apply to any response actions that may be conducted under an Audit Follow-Up plan.
12. Amends the section on minimum public notification requirements to:

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- Clarify that if local officials have already been notified about a Release Abatement Measure or an Immediate Response Action, they do not need to be notified again before the fieldwork to implement these actions begins.
 - Require that local officials be sent existing report summaries rather than report notices of availability.
13. Establishes the same 20-day public comment period for Tier I and Tier II documentation packages. Requires that local officials be sent a copy of the Phase I site map with their copy of the Tier Classification notification.
14. Clarifies that the public can request that certain Public Involvement Activities be performed without having to submit a PIP petition.
15. Provides procedures for expanding, reducing or terminating Public Involvement Activities.
16. Clarifies at what point in the cleanup process adequately regulated sites may be eligible for PIP site designation and TAG funding.
17. Clarifies that PIP site designation is contingent upon the site meeting the eligibility criteria for a PIP site, not on notifying the petitioners of the designation.
18. Clarifies that a new PIP petition is not needed when a new reportable release condition occurs at a site and that a notice about the new release must be sent to the mailing list.
19. Allows petitioners to withdraw a PIP petition.
20. Amends requirements at PIP sites:
- Clarifies that all public involvement documents, not just PIP documents, be submitted to DEP as they become available.
 - Expands the public comment period for RAMs to 20 calendar days.
 - Establishes steps for terminating and modifying PIP sites and designations, by clarifying the role of public involvement interviews, public meetings, fact sheets, public comment periods, etc.
- **SUBPART I AND J AND MISCELLANEOUS**
1. Specifies, for Imminent Hazard notifications and evaluations, which of co-located samples should be used to trigger notification.
2. Specifies, for Imminent Hazard notifications and evaluations, which of co-located samples should be used in developing Exposure Point Concentrations.

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3. Specifies that species-specific data for chromium may be used to overrule a notification based solely on total chromium data.
4. Reinstates the requirement that was inadvertently deleted during the Wave 1 regulation amendments that “Hot Spots” shall be considered distinct exposure points.
5. Specifies when average, upper confidence limits on the mean and maximum values should be used for the Exposure Point Concentration.
6. Clarifies the change in groundwater that may occur if a building is constructed on formerly vacant land.
7. Clarifies that Method I cannot be used when a complete soil-to-indoor air exposure pathway exists.
8. Updates Imminent Hazard Evaluation procedures by (1) giving preference to MADEP-developed toxicity information, (2) identifying a Hazard Index of one as the risk management criteria for specific chemicals, and (3) identifying Imminent Hazard levels in drinking water for specific chemicals.
9. Updates Method 2 to reflect the methodologies used in developing the updated Method 1 standards.
10. Corrects typographical errors dealing with performance standards.
11. Reinstates a section of the MCP that was inadvertently deleted in the “Wave 1” revisions, describing how to interpret the comparison of site data to Upper Concentration Limits (UCLs).
12. Clarifies that no UCL exist for asbestos.
13. Updates Activity and Use Limitation (AUL) provisions to reference default chemical-specific soil UCLs adopted in Wave 1.
14. Specifies notification requirements proposed for asbestos and Asbestos Containing Material.
15. Eliminates the requirement to implement a Grant of Environmental Restriction when a private well is properly abandoned.
16. Corrects typographical and cross-referencing errors.
17. Clarifies requirements for Engineered Barriers.
18. Makes consistent references to when an Engineered Barrier or cap may be selected as a remedy.
19. Requires that an RAO Statement indicate whether DEP approved analytical methods were used to generate data.

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20. Clarifies that the discharge of vapors into school buildings and residential dwellings meets the definition of a Condition of Substantial Release Migration if the vapors are being transported via the vadose zone and are impacting these structures.
21. Corrects a cross-reference at 310 CMR 40.0006 under “Substantial Release Migration” to “Condition of Substantial Release Migration”.
22. Clarifies at 310 CMR 40.0006 via a new definition of Pilot test when a pilot test is considered assessment versus remediation.
23. Proposes revision to the definition of Volatile Organic Compound to update the reference to the most current EPA method.
24. Clarifies DEP’s authority to refuse to accept or require modification of any submittal required by the MCP if it determines that it does not meet the applicable requirements of the MCP.
25. Clarifies the grace period for submittals made electronically.
26. Requests comments on whether the regulations should retain grace periods.
27. Clarifies that a Conceptual Scope of Work submitted pursuant to 310 CMR 40.0510 is subject to the provisions of an LSP Opinion.
28. Deletes the Pittsfield Pilot project provisions.
29. Clarifies Remediation Waste must be removed from a disposal site within 120 days of excavation (or 90 days if hazardous waste), and that the options for transporting it are a Bill of Lading or a Hazardous Waste Manifest
30. Corrects a typographical error in 310 CMR 40.0040.
31. Revises the adequately regulated sections as they pertain to Conditions of Substantial Release Migration.
32. Clarifies that whenever DEP establishes Interim Deadlines, the deadlines will be provided in writing.
33. Corrects typographical and cross-referencing errors in 310 CMR 40.0172.
34. Clarifies that dilution of contaminated media is not a preferred and/or allowed remedial option.
35. Deletes reference to DEP approval of RAMs that should have been made in the 6/03 revisions.
36. Corrects a cross-reference in 310 CMR 40.0750.
37. Deletes a redundant phrase in 310 CMR 40.1072(2)2.
38. Eliminates Form 1072C.

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39. Revises 40.1072(2)(a) to provide for the use of either Form 1072A or 1072 in an application for a Grant of Environmental Restriction.
40. Clarifies that the terms of AULs must be incorporated into instruments of transfer, such as deeds, mortgages, and leases.
41. Corrects requirement at 310 CMR 40.1074(2)(a)4.b.
42. Clarifies that the 45-day interest holder notification period for AULs may be waived.
43. Allows for the voluntary implementation of an Activity and Use Limitation (AUL) to limit use of groundwater for purposes other than changing the groundwater category.
44. Revises 40.1074(4)(c) and 40.1071(3) to expand the means by which proof that a request was made to marginally reference the AUL on the deed is submitted to DEP.
45. Clarifies that when there is a change of site activities and uses that are not specifically permitted in the area of an AUL, the required LSP Opinion must consider whether a condition of No Significant Risk exists.
46. Incorporates Forms 1084D and E (to terminate AULs because additional response actions are necessary) into the regulations.
47. Allows anyone required to comply with an audit follow-up plan to request in writing a modification to the required plan as long as the request is made before the original follow-up plan deadline.
48. Adds environmental justice criteria to the Technical Assistant Grant requirements.
49. Deletes the reference to “original” signatures in the Bill of Lading (BOL) requirements to facilitate the electronic submittal of BOLs.
50. Corrects the Notice of Extended Review Period for Permit applications to be consistent with the intent of providing an additional 45 days, not to be limited by when DEP send the Notice.

• **NUMERICAL STANDARDS**

1. Proposes revised standards, Upper Concentration Limits, Reportable Concentrations and Reportable Quantities as a result of a thorough reevaluation of the methodology used to calculate these values.
2. Seeks comment on the use of US EPA-published Cancer Slope Factors and/or Unit Risk Values.
3. Provides a summary of the U.S. Army’s position on the toxicity information used by DEP to calculate proposed standards for the explosive RDX.